IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5221 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER G.S.R.T.C. & 1 - Petitioner(s)

Versus

ODHAVJI NARANJI CHAUHAN - Respondent(s)

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Appearance :

MR NAGESH C SOOD for Petitioner No(s).: 1,2.

MR GK RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 27/07/2005

CAV JUDGMENT

1.By filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner – Gujarat State Road Transport Corporation has

challenged the judgment and award passed by the Presiding Officer, Labour Court, Bhavnagar in Reference (LCB) No.368 of 1998 dated 30.6.2000 by which the Labour Court has directed the petitioner to reinstate the respondent workman in service with continuity of service within 30 days from the date of the award and also passed the order to pay the back wages for the intervening period.

2. It appears from the record that the respondent workman was working as Tinsmith / Blacksmith in Gariyadhar Depot of Bhavnagar Division from last 29 years. The petitioner Corporation had issued the chargesheet to the workman for remaining unauthorised absent from 1.3.1996 to 10.5.1996 and ultimately, the respondent workman was dismissed from service on 31.1.1997. The respondent workman had challenged the said order of dismissal passed by the petitioner Corporation before the Labour Court, Bhavnagar by way of Reference, being Reference (LCB) No.368 of 1998. Ultimately, the Labour Court after hearing the parties and appreciating the evidence on record passed the judgment and order on 30.6.2000 by which the Labour Court has directed the petitioner to reinstate the respondent workman in service with continuity of service within 30 days from the date

of the award and also passed the order to pay the back wages for the intervening period. The petitioner Corporation has challenged the judgment and award dated 30.6.2000 by way of this petition under Articles 226 and 227 of the Constitution of India.

3. Heard the learned advocates for the parties.

4. Mr.Sood, learned AGP appearing for the petitioner Corporation has vehemently submitted that the Labour Court has erred in not appreciating the fact that the findings of the Inquiry Officer were based on cogent evidence and the report of the Inquiry Officer was in consonance with the rules. It is submitted that the Labour Court has only jurisdiction to decide the correction making process and has no jurisdiction to decide the correction of the decision itself. He submitted that the contention of illness raised by the respondent workman was got up only to get away with the punishment and was purely an afterthought. He submitted that the Labour Court ought to have seen that the respondent workman had indulged himself in similar misconduct in past and was a persistent defaulter. He submitted that the Labour Court ought not to have granted back wages for the intervening

period for which the respondent workman has not worked. It is, therefore, requested to allow the present petition by quashing and setting aside the impugned judgment and award dated 30.6.2000 passed by the Presiding Officer, Labour Court, Bhavnagar in Reference (LCB) No.368 of 1998.

5. On the other-hand, Mr.G.K.Rathod, learned advocate appearing for the respondent workman has submitted that the petition under Articles 226 and 227 of the Constitution of India is not maintainable since the Labour Court has not committed any jurisdictional error and, therefore, the finding recorded by the Labour Court does not have infirmity and this Court having supervisory jurisdiction under Article 227 of the Constitution of India, may not interfere with the impugned judgment and award passed by the Labour Court. He submitted that the charge against the concern workman is in respect of unauthorized absent which is not considered to be a grave misconduct, and, therefore, no dismissal order should have been passed by the petitioner Corporation. He submitted that due to illness, the respondent workman had remained absent from 1.3.1996 to 10.5.1996, i.e., for about 70 days and this aspect is sufficiently proved by the respondent before the Labour Court. It

is, therefore, submitted by the learned advocate appearing for the respondent workman to dismiss the present petition with costs.

6. From the factual matrix as set out herein above, it can be seen that the respondent workman had remained absent from 1.3.1996 to 10.5.1996, i.e., for about 70 days due to his illness for which the petitioner Corporation had issued the chargesheet to the respondent workman and ultimately, he was dismissed from service on 31.1.1997. The respondent workman had challenged the said order of dismissal before the Labour Court, Bhavnagar by way of Reference, being Reference (LCB) No.368 of 1998. Ultimately, the Labour Court, Bhavnagar vide its judgment and award dated 30.6.2000 allowed the reference and directed the petitioner Corporation to reinstate the respondent workman with continuity of service and also passed the order to pay the back wages to the responent workman for intervening period.

7. At the time of hearing of this petition, it is submitted by Mr.G.K.Rathod, learned advocate appearing for the respondent workman that the respondent workman has already retired from service on attaining the age of superannuation, i.e. On 31.12.1998, and, therefore, the respondent workman

is entitled to get back wages upto the date of retirement as per the award of the Labour Court. In the present case, the Labour Court has recorded the finding that the Depot Manager has issued the chargesheet to the respondent workman and having initiated the inquiry and recording the findings, the Depot Manager has passed the order imposing the punishment and that the order passed by the petitioner Corporation is harsh looking to the gravity of the charge framed against the respondent workman and, therefore, while exercising the powers under Section 11-A of the Industrial Disputes Act, 1947, the Labour Court, after hearing the parties and appreciating the evidence, has directed the petitioner Corporation to reinstate in service the respondent workman with back wages for the intervening period.

8. The present petition is filed, admittedly, under Article 227 of the Constitution of India. It is now well settled that the High Court has limited jurisdiction under Article 227 of the Constitution of India. A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India unless the jurisdictional error is pointed

out. In the present case, no jurisdictional error is committed by the Labour Court while passing the impugned judgment and award and, therefore, no interference of this Court is called for while exercising the supervisory jurisdiction under Article 227 of the Constitution of India. Further, the punishment of dismissal from service imposed by the petitioner Corporation upon the respondent workman is so harsh even if it is presumed that the respondent workman had remained absent unauthorizedly for 70 days. However, it appears from the record that the leave was sought on medical ground and the workman had not been informed about refusal of his leave. It is required to be noted that while passing the order of dismissal, the petitioner Corporation has not considered as to why lesser punishment should not be imposed upon the respondent workman for remaining absent without leave.

9. Considering the facts and circumstances of the case, I am of the considered opinion that looking to the charge levelled against the respondent workman, the order of dismissal is so harsh and it is rightly quashed and set aside by the Labour Court while exercising the powers under Section 11-A of the

Industrial Disputes Act. Under the circumstances no interference of this Court is called for, and, therefore, the judgment and order passed by the Labour Court, Bhavnagar is hereby confirmed.

10. In the result, this petition fails and the same is dismissed. Rule is discharged with no order as to costs.

(SHARAD D.DAVE,J)

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